

COLORADO MODEL STANDARDS OF CONDUCT FOR MEDIATORS

These Colorado Model Standards of Conduct for Mediators are intended for voluntary statewide use. The standards have been endorsed by the Colorado Bar Association, Colorado Judicial Institute, the Colorado Department of Law, the Colorado Council of Mediators and Mediation Organizations, and the Office of Dispute Resolution of the Colorado Judicial Department

Representatives from each of these organizations worked as a steering committee on this project for several years. The proposed standards were circulated to various interested groups and the sponsoring organizations for comments before the final standards were endorsed.

While the Applicability Section of these standards specifically addresses use by persons who hold themselves out as mediators and usually charge a fee, any persons who hold themselves out as mediators, regardless of whether a fee is charged, are not precluded from and are encouraged to use these standards.

DEFINITION OF MEDIATION: Mediation is a process in which an independent, impartial, trained, neutral third party - a mediator - facilitates the resolution of a dispute by assisting the parties to reach voluntary agreement. A mediator facilitates communication, promotes understanding, focuses the parties on their interests, and assists them in developing options to make informed decisions. A mediator does not have authority to make decisions for or impose a settlement on the parties.

APPLICABILITY: The Standards of Conduct are applicable to those persons who hold themselves out as mediators and who usually charge a fee for their mediation services.

I. PRINCIPLES OF SELF DETERMINATION :

- A. The mediator shall rely upon and encourage the ability of the parties to reach a voluntary, informed agreement.
- B. The mediator shall inform all parties that the process is consensual in nature, that the mediator is an impartial facilitator, and that the mediator shall not impose or force any settlement on the parties.
- C. The mediator shall not make substantive decisions for any party.

II. IMPARTIALITY:

- A. The mediator shall advise all parties of any prior or existing relationships or other circumstances giving the appearance of or creating a possible bias, prejudice, or partiality.
- B. The mediator shall conduct the mediation in an impartial manner and should avoid conduct that gives the appearance of partiality.
- C. If the mediator is unable to conduct the process in an impartial manner, the mediator shall withdraw.
- D. The mediator should not accept from nor give to a party any gift, favor, loan, or any other item of value. This does not preclude the mediator accepting reasonable fees for services rendered.

III. COMPETENCE:

- A. The mediator should have training and education in the mediation process, as well as familiarity with the subject matter, including general principles of law, pertaining to any area in which the mediator is willing to serve.
- B. The mediator shall decline appointment, withdraw, or request technical assistance when a case is beyond the mediator's competence.
- C. The mediator shall maintain professional competence in mediation skills.

IV.

CONFIDENTIALITY:

- A. The mediator shall preserve and maintain the confidentiality of a mediation proceedings except where required by law to disclose information.
- B. The mediator should conduct the mediation so as to provide the parties the greatest protection of confidentiality afforded by law and mutually agreed to by the parties, subject to and consistent with the Colorado Dispute Resolution Act.
- C. The mediator shall advise and reach agreement with the parties concerning the limits and bounds of confidentiality and non-disclosure prior to the commencement of the mediation.
- D. The mediator shall not disclose any communication made in private session, unless the mediator has confirmed that part or all of this communication may be shared with another party or any other person.
- E. If the mediation is confidential, the mediator shall not permit observers or others to attend a mediation session without first obtaining an agreement of confidentiality.
- F. The mediator shall maintain confidentiality in the storage and disposal of records and shall render anonymous all identifying information when materials are used for research, training, or statistical compilations.
- G. The mediator shall take all appropriate action to protect the confidentiality of the process from requests for disclosure by any third party, including necessary legal action to quash a subpoena issued to compel the mediator's testimony or matters discussed in mediation.

V.

QUALITY OF THE PROCESS:

- A. The mediator should conduct the mediation fairly and diligently.
- B. The mediator has an on-going duty to assess the case and determine that it is appropriate and suitable for mediation.
- C. The mediator should assist the parties in evaluating the benefits, risks, and costs of mediation and alternative methods of problem solving available to them.
- D. The mediator should only accept cases in which relevant deadlines can be met.
- E. The parties and mediator should decide who will (and will not) attend the mediation.
- F. The mediator shall not unnecessarily or inappropriately prolong a mediation session if it becomes apparent to the mediator that the case is unsuitable for mediation or if one or more parties is unwilling or unable to participate in the mediation process in a meaningful manner.
- G. If one of the parties is unable to participate in a mediation process for psychological or physical reasons, the mediator should postpone or cancel mediation until such time

as all parties are able and willing to resume.

- H. If the parties insist on pursuing an agreement which the mediator knows or should know is in violation of the law, and has advised the parties of such, the mediator shall terminate the mediation.
- I. The mediator shall not intentionally or knowingly misrepresent material facts or circumstances in the course of conducting mediation.

VI. TRUTH IN ADVERTISING AND, SOLICITATION:

- A. The mediator shall be truthful in advertising and solicitation for mediation.
- B. All advertising by a mediator shall honestly represent the services to be rendered.
- C. The mediator shall not make or imply promises or guarantees of result.

VII. COMPENSATION, FEES AND CHARGES:

- A. If a fee is charged, the mediator shall give a written explanation of the fee structure, including related costs, and manner of payment to the parties prior to the mediation.
- B. The mediator shall maintain adequate records to support charges for services and expenses, and provide copies to parties upon request.
- C. The mediator shall not enter into a fee agreement which is contingent upon the result of the mediation or amount of the settlement.
- D. The mediator shall neither receive nor give commissions, rebates, or similar forms of remuneration for referral of clients for mediation except for fees to an independent marketing agent.
- E. The mediator shall not use confidential information obtained in a mediation for personal gain or advantage.

VIII. DUAL RELATIONSHIPS:

- A. The mediator shall not provide psychotherapy or legal representation, to any party during the mediation process.
- B. If the mediator has at any time provided psychotherapy, legal representation, or other professional services in a confidential relationship to any of the parties, the mediator shall advise and fully disclose the nature of the prior relationship.